No. 97-1895

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1997

MARY McCARTHY, et al.,

Petitioners,

vs.

PROVIDENTIAL CORPORATION, et al.,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

PETITIONERS' RESPONSE TO THE SEPTEMBER 16, 1998 MOTION OF STEPHANÉ BOURCHIER DE CARBON, SOCIÉTÉ CIVILE DE GESTION DES ACTIONS DE CARBON, and SEACOAST MOTORS OF SALISBURY, INC. TO FILE BRIEF AMICUS CURIAE OUT OF TIME

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PETITIONERS' RESPONSE TO BRIEF AMICUS CURIAE

Petitioners in this case agree with *amici* that this case and three others with pending Petitions for Certiorari raise closely related questions regarding the appealability of a district court's dismissal of a complaint in favor of arbitration.[1] The fact that four separate Petitions have arisen out of recent decisions from three different Circuits illustrates the present state of disarray among the lower courts on the interplay between the Federal Arbitration Act and 28 U.S.C. §1291.

Petitioners also note that *McCarthy* was the first-filed Petition of the four, and involves a Ninth Circuit decision relied upon in *each* of the other three cases. Moreover, *McCarthy* presents a clear, compelling question: May a party appeal an arbitration order granted when the district court holds that "none of plaintiff's claims remain to be resolved by this court," dismisses the action, issues a separate, final judgment pursuant to Federal Rules of Civil Procedure 58 and 79, and unequivocally orders the clerk to "close the file"? Pet. App. 39a-41a. Thus, Petitioners respectfully suggest that this case is the proper vehicle to address this question.

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[1] The four Petitions for Certiorari are, *McCarthy v. Providential Corp.*, No. 97-1895; *De Carbon v. General Motors Corp.*, No. 98-189; *Napleton v. General Motors Corp.*, No. 98-279; *Seacoast Motors of Salisbury, Inc. v. Chrysler Corp.*, No. 98-415.

Respectfully submitted,

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